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C O N F I D E N T I A L SECTION 01 OF 06 NEW DELHI 003197

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TAGS: [PGOV](#) [PTER](#) [PHUM](#) [PREL](#) [PINR](#) [KDEM](#) [KISL](#) [PK](#) [IN](#)

SUBJECT: GOI'S SWIFT COUNTERTERRORISM STEPS HELP LIMIT
POLITICAL DAMAGE

REF: A. NEW DELHI/3167/3166/3165/3164/3163
[1](#)B. NEW DELHI 3158/3157/3156/3127/3125/3124/3116
[1](#)C. NEW DELHI 3097/3067/3054/3052/3046/3037
[1](#)D. NEW DELHI 3025/3024/3018
[1](#)E. MUMBAI 550

Classified By: Ambassador David C. Mulford for Reasons 1.4 (B, D)

This is an action request - see para 18

[1](#)1. (C) To respond to the public outcry following the Mumbai terror attacks, the GOI moved quickly to limit the political damage and demonstrate that it is serious about combating terrorism. It forced through a bill to create a new crime fighting federal agency that will concentrate on terrorism and other national threats. It amended existing law to strengthen the hands of security and law enforcement agencies in fighting terrorism. It scrambled to move forward on longstanding draft legislation dealing with terrorist finance and the mandate of paramilitary forces to protect infrastructure. The GOI also took some administrative steps to improve the terror fighting capacity of security agencies. Two themes have framed the public debate on the new legislation: states' rights vs. federal power; and civil liberties vs. stronger law enforcement powers. The new Indian legislation and the GOI's renewed focus on terrorism offers the possibility for revitalizing our bilateral cooperation on counterterrorism. U.S.-India counterterrorism has surged forward in the aftermath of Mumbai; however, implementation of the new legislation will be key and it is too early to tell whether we can look forward to a deepening of this cooperation. Following a dazed and clumsy initial response to the Mumbai terror attacks which elicited scathing criticism and ridicule from its political opponents, the press and the public at large, the UPA appears to have recovered its footing limited the political damage. It is not yet clear, however, whether the new legislation will bring about the the paradigm shift needed in India to fight the growing terrorist threat. End Summary.

Parliament Acts Swiftly

¶2. (U) After vigorous debate, the Indian Parliament on December 18 passed two pieces of legislation to strengthen India's terrorism fighting capacity in the aftermath of the Mumbai attacks. One bill creates a new federal National Investigation Agency with robust powers to investigate and prosecute selected terrorism-related threats and crimes. The other bill tightens provisions of the existing law to target terrorism. The two bills will become law upon the President's signature, which is expected immediately.

¶3. (U) The Lok Sabha (lower house) passed the legislation on December 17 while the Rajya Sabha (upper house) approved it a day later. There was strong and remarkably untitled support for the measures, which sailed through by voice vote in both houses. Bharatiya Janata Party leader L.K. Advani, while declaring his strong support for the legislation, accused the ruling United Progressive Alliance (UPA) coalition of reacting too late to the threat of terrorism. Seeking to take credit for the tougher laws, he pointed out that the UPA had repealed the strong Prevention of Terror Act (POTA) as one of its first pieces of business. He welcomed the UPA's change of heart. He was, however, attacked effectively by the government for his own considerable failings in countering terrorism when he was Home Minister in previous BJP-led government. Amendments offered by the Left parties to dilute some of the provisions were shot down.

National Investigation Agency (NIA)

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¶4. (U) The NIA bill creates a federal agency with powers to investigate and prosecute terrorism and other crimes that threaten the "sovereignty, security and integrity" of India, including hijacking and attacks on nuclear plants. The jurisdiction of the NIA extends to crimes covered under the following laws: The Atomic Energy Act 1962; The Unlawful Activities (Prevention) Act 1967; The Anti-Hijacking Act 1982; the Suppression of Unlawful Acts Against Safety of Civil Aviation Act 1983; The SAARC Convention of (Suppression of Terrorism) Act 1993; the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002; the Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act 2005; and offenses under certain specified sections of the Indian Penal Code.

¶5. (U) The enabling legislation requires the agency to obtain prior consent from the Home Ministry before taking on a case. It makes it mandatory for the states to extend all cooperation and assistance to the NIA once it has opted to become involved in the case. To ensure speedy trials, the bill establishes special courts to be presided over by judges appointed by the GOI in consultation with the Chief Justice of India. The seniority of presiding judge must be at the level of at least a Sessions Judge or an Additional District Judge. The law also includes provision to protect witnesses and to allow in-camera hearings.

Unlawful Activities (Prevention) Amendments (UAPA) Bill

¶6. (U) Instead of a full rewrite of the criminal statutes dealing with terrorism on the model of POTA, the Indian Parliament passed a bill to amend the provisions of the existing Unlawful Activities (Prevention) Act 1967 to add stringent provisions that strengthen the hand of law enforcement in fighting terrorism. The amendments include provisions to:

- shift the burden of proof to the accused in terrorism cases if arms or explosives are uncovered
- tighten relevant laws to allow wiretaps being used as

evidence (Note: Recordings or transcripts of tapped phone calls are not generally accepted as primary evidence in Indian courts)

-- require a fast-track process for appeals (30 days for appeal to be filed; 90 days for High Court to rule on the appeal)

-- increase from 15 to 30 days the period of time an accused can be kept in police custody

-- tighten bail provisions in terrorism cases: no anticipatory bail; no bail for foreigners who entered illegally; no bail without the prosecutor

-- maximum life imprisonment for those involved in terrorist activity

-- no Indian national accused in terrorism cases to be released on personal bond

-- freeze assets and bank accounts of accused and their "overt and covert" sympathizers and financiers

-- increase from 90 days to 180 days the period of time before charges must be filed with a court

-- indefinite detention without charge for foreign nationals

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involved in terrorist activities

-- up to ten years of imprisonment for those using explosives or fire arms with intention of assisting terrorist activity.

GOI Close to Passage of PMLA Amendments

17. (C) The Mumbai attacks have also galvanized the GOI to act on long-standing terrorist financing legislation. In Within the new UAPA, besides the provisions for freezing assets, are definitional requirements that meet all nine core Financial Action Task Force (FATF) requirements. Even more encouraging is the good progress made in the current parliamentary session to enact the long-standing amendments to the Prevention of Money Laundering Act (PMLA). Ministry of Finance Joint Secretary Krishnan told Acting ECouns December 18 that he expects the amendments to the PMLA will pass before Parliament concludes on December 23. Krishnan said these amendments incorporate all 49 major FATF recommendations on developing a robust AML/CFT architecture. Following an intense review of the PMLA amendments earlier this week, the standing committee's report to the lower house of Parliament recommending early passage is complete. In his best estimate, Krishnan predicts that the much-awaited amendments to the PMLA will pass both houses of Parliament in the next couple of days and he will personally keep Mission posted on the status. Krishnan added that the atmospherics surrounding the passage of these amendments has changed post-Mumbai and have been helped by the former Finance Minister and now Home Minister Chidambaram's familiarity with the legislation.

18. (C) Krishnan cautioned that the only possible glitch preventing passage is that sudden economic or political developments surface that push consideration of PMLA down the legislative agenda to the extent that the GOI runs out of time to get a vote by both houses of Parliament on the PMLA by next Tuesday. Krishnan noted that the Indian perception has been that the U.S. has been holding back India's standing request at FATF to hold an early mutual evaluation - regardless of whether or not the amendments are passed. He said that other FATF members are satisfied with India introducing the amendments without providing a specified date of passage - something he points out is simply not possible

in India. He underlined that it should be enough that the amendments have been introduced and are pending review within Parliament. Krishnan said that a signal from FATF now that it will schedule a mutual evaluation sometime in 2009 - will bolster the GOI's case to Parliament for the urgent need to put PMLA at the top of its agenda and enact the amendments by December 23. In light of the Mumbai terrorist attacks, there is now strong bipartisan support from the ruling UPA and opposition BJP parties on the importance of the new PMLA provisions and the securing of FATF membership for India. Krishnan added that the FATF cell which is under his supervision has been working actively to respond and reply to the lengthy FATF questionnaires.

GOI Considering CISF Legislation

¶9. (U) The Cabinet approved on December 16 amendments to the Central Industrial Security Force (CISF) Act to change the mandate of the CISF, a federal paramilitary security force used to guard public facilities, including airports, dams, bridges and government buildings. The new legislation -- yet to be submitted to Parliament -- will seek to allow the CISF to protect sensitive private sector facilities such as hotels, oil refineries and other industrial facilities. The private sector entities would be charged a fee for this

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service. The Cabinet Committee on Security had recently approved a proposal to increase the size of the CISF by 40,000 personnel.

Previous post-Mumbai GOI Proposals

¶10. (U) In his December 11 addresses to Parliament, Home Minister P. Chidambaram had announced the following measures, which do not require new legislation:

- Creation of several regional hubs for the National Security Guard so it can respond faster to incidents
- Creation of a Coastal Command for overall supervision and coordination of maritime and coastal security. The mandate of the Coastal Command will be to secure India's coastline
- Filling vacancies in the intelligence agencies expeditiously
- Improve the technical equipment available to the intelligence agencies
- Creation of 20 counter-insurgency and anti-terrorism schools in different parts of the country for training the commando units of the state police forces.

Comment: Public Debate on Federalism

¶11. (SBU) Two issues frame the public debate surrounding the the new legislation: states' rights vs. federal powers; and civil liberties vs. stronger law enforcement powers. It will take years for this debate to play out. The Indian constitution considers maintenance of law and order a "state subject" and, therefore, the responsibility of the states. The BJP supports a new federal agency to combat certain crime, but this idea has long been opposed and blocked by the states as an encroachment of their states' prerogatives. Members of Parliament from some regional parties voted against the two bills. Home Minister Chidambaram recognized the arguments of the opponent of the NIA, assuring them that the federal government would make use of its power to bring in the NIA only under "extraordinary" circumstances. He has also called a meeting of Chief Ministers from all the states on January 6 to try to secure their buy-in.

¶12. (C) The reality is that the states and federal government will have to arrive at a practical working relationship. States, not accustomed to federal interference in law and order issues, will likely show institutional resistance to parts of law and order portfolio being carved out to a federal agency. The opposition BJP has supported the idea of a new federal agency, provided the GOI also introduces legislation to strengthen other laws dealing with the tradeoffs between the rights of the accused and the security forces. It will take time before the relationship between the states and the federal agency is effectively worked out.

Comment: Public Debate on Civil Liberties

¶13. (U) The GOI is acutely aware of the need to strike the right balance between protecting civil liberties and strengthening the powers of the security agencies to fight terror. It had relentlessly attacked the BJP-led National Democratic Alliance (NDA) government for enacting POTA, which it had called a "draconian" measure, misused by some to target Muslims. One of the UPA's first acts when it assumed power in 2004 was to repeal POTA. In this context, the UPA

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pushing through legislation that comes close to POTA illustrates the tremendous pressure felt by the government to act forcefully after the Mumbai attacks. The GOI is still loath to any comparisons with POTA. Its spokesmen go to great lengths to explain why POTA was different.

¶14. (C) The UPA has also heard loudly from its own coalition partners who have questioned some of the provisions of the new legislation. The most frequently criticized measures are ones that shift the burden of proof to the accused under certain circumstance, change the rules of evidence and tighten the bail provisions. However, the arguments of the dissenters have been swept aside by the GOI in the wake of the Mumbai terror attacks. The Prime Minister in a recent speech warned that if India must fight terrorism effectively, it will need to make some small compromises on human rights. Home Minister Chidambaram has tried to soften the blow by saying in Parliament that the legislation can be fine-tuned during the February 2009 sitting of Parliament if provisions are found to be wanting.

Comment: Positive Environment For CT Cooperation

¶15. (C) The new GOI counterterrorism initiatives reflect the fact that the Mumbai attacks have shocked the GOI into action. For the USG, the new found GOI resolve is a welcome sign and augers for bilateral counterterrorism cooperation, where our offers had in the past been repeatedly resisted by elements within the GOI. The new Home Minister had already signaled a willingness to work with us on counterterrorism. There are also signs that the GOI realizes that a lot more needs to be done. The Home Minister conceded that the passage of the legislation alone would not be a deterrent to jihadis motivated to wage war against India. For the USG, the creation of the NIA offers a possibility that counterterrorism cooperation will improve. U.S.-India counterterrorism has surged forward in the aftermath of Mumbai; however, implementation of the new legislation will be key and it is too early to tell whether we can look forward to a deepening of this cooperation.

¶16. (C) It is not clear, however, whether these initiatives are at the beginning of a paradigm shift that is needed to fundamentally change the way that terrorism is fought in India - from a reactive mode to a proactive aggressive intelligence gathering and intelligence processing model in which the numerous federal and state agencies counterterrorism a top priority and work together and in cooperation with the international community to stop the

attacks before they happen. The sweeping changes in the counterterrorism legislation this week and some of the statements of the Home Minister are an encouraging sign that at least some in the GOI may have begun to understand this.

Comment: Finding its Feet

¶17. (C) The UPA appears to have finally recovered its footing. The swift passage of the important NIA and UAPA legislation has been the latest in a string of strong actions that inspire some level of confidence in the public, as has a house cleaning that removed an inept Home Minister, the Chief Minister and Deputy Chief Minister of Maharashtra. It has projected a stronger public image, in which the new Home Minister Chidambaram radiates confidence. It has invoked admiration for the clear apologies to the nation by the Prime Minister and the Home Minister for the GOI's failure to prevent the Mumbai attacks. That said, all this will quickly unravel if there is another terrorist attack in the coming months which casts renewed doubt on the GOI's competence.

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¶18. (U) Action request: Post requests that Treasury and the Department consider discussing with FATF the feasibility of committing to a 2009 mutual evaluation with India and conveying this to the GOI.
MULFORD